

ESTTA Tracking number: **ESTTA335132**

Filing date: **03/02/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	The Republic of Tea, Inc.
Granted to Date of previous extension	03/03/2010
Address	Suite 100, #5 Hamilton Landing Novato, CA 94949 UNITED STATES

Correspondence information	The Republic of Tea, Inc. Suite 100, #5 Hamilton Landing Novato, CA 94949 UNITED STATES mburke@mwe.com, umattsson@mwe.com, cvicino@mwe.com, chicago_ip_docket@mwe.com Phone:312-372-2000
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### Applicant Information

Application No	77623419	Publication date	11/03/2009
Opposition Filing Date	03/02/2010	Opposition Period Ends	03/03/2010
Applicant	MONSTEROPS LLC 1850 RELIABLE CIRCLE COLORADO SPRINGS, CO 80906 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. First Use: 2006/10/26 First Use In Commerce: 2006/10/26 All goods and services in the class are opposed, namely: Nutritional supplements in liquid form
Class 032. First Use: 2006/10/26 First Use In Commerce: 2006/10/26 All goods and services in the class are opposed, namely: Non-alcoholic beverages, namely, sports drinks and energy drinks


### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

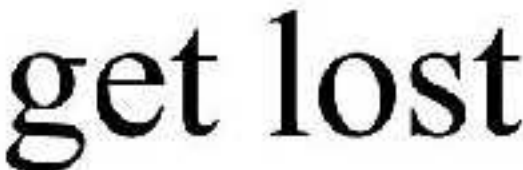
U.S. Registration No.	3320853	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET CHARGED		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes

U.S. Registration No.	3320856	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET CLEAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes		

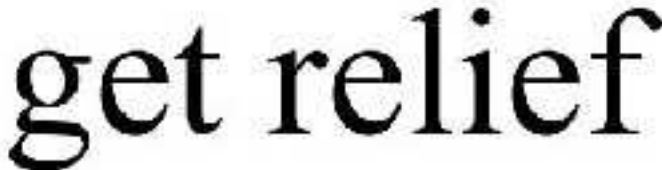
U.S. Registration No.	3320852	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET GORGEOUS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes

U.S. Registration No.	3320850	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET LOST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes		


U.S. Registration No.	3320849	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET IT GOING		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes

U.S. Registration No.	3320851	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET RELIEF		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes		


U.S. Registration No.	3320855	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET SOOTHED		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes


U.S. Registration No.	3596054	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET GROWING		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes		


U.S. Registration No.	3596055	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET HAPPY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes

U.S. Registration No.	3596056	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET HEART		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes		

U.S. Registration No.	3596057	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET MATERNAL		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes

U.S. Registration No.	3596058	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET PASSIONATE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes		


U.S. Registration No.	3596059	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET RELAXED		

Design Mark	<b>GET RELAXED</b>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes

U.S. Registration No.	3596060	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET SMART		
Design Mark	<b>GET SMART</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes		

U.S. Registration No.	3596061	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET WELLNESS		



Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes

Attachments	78778403#TMSN.jpeg ( 1 page )( bytes ) 78778428#TMSN.jpeg ( 1 page )( bytes ) 78778397#TMSN.jpeg ( 1 page )( bytes ) 78778369#TMSN.jpeg ( 1 page )( bytes ) 78778363#TMSN.jpeg ( 1 page )( bytes ) 78778392#TMSN.jpeg ( 1 page )( bytes ) 78778412#TMSN.jpeg ( 1 page )( bytes ) 77351631#TMSN.jpeg ( 1 page )( bytes ) 77351642#TMSN.jpeg ( 1 page )( bytes ) 77351647#TMSN.jpeg ( 1 page )( bytes ) 77351649#TMSN.jpeg ( 1 page )( bytes ) 77351653#TMSN.jpeg ( 1 page )( bytes ) 77351655#TMSN.jpeg ( 1 page )( bytes ) 77351656#TMSN.jpeg ( 1 page )( bytes ) 77351658#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 8 pages )(1832305 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ulrika E. Mattsson/
Name	Ulrika E. Mattsson
Date	03/02/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 77/623,419  
For the mark GET SPIKED!  
Published in the Official Gazette on November 3, 2009

The Republic of Tea, Inc.,

Opposer,

v.

MONSTEROPS LLC,

Applicant.

**NOTICE OF OPPOSITION**

The Republic of Tea, Inc. is a California corporation, with its principal place of business at #5 Hamilton Landing, Suite 100, Novato, CA 94949 (“Opposer”); and through its counsel, McDermott Will & Emery LLP; 227 West Monroe Street; Chicago, Illinois 60606, hereby states that it will be damaged by registration of the mark GET SPIKED!, covered by U.S. Application Serial Number 77/623,419, filed by MONSTEROPS LLC (“Applicant”), and therefore files this Notice of Opposition to the application.

The grounds for this Opposition are as follows:

1. MONSTEROPS LLC seeks to register GET SPIKED! as a trademark for nutritional supplements in liquid form in International Class 5 and for non-alcoholic beverages, namely, sports drinks and energy drinks in International Class 32.
2. Opposer owns a family of registrations starting with the word GET. In particular, Opposer own a registration for the mark GET CHARGED, Reg. No. 3,320,853 for herbal teas for medicinal purposes, in International Class 5. Opposer also owns trademark registrations for GET CLEAN, Reg. No. 3,320,856, GET GORGEOUS, Reg. No. 3,320,852, GET GROWING, Reg. No.

3,596,054, GET HAPPY, Reg. No. 3,596,055, GET HEART, Reg. No. 3,596,056, GET IT GOING, Reg. No. 3,320,849, GET LOST, Reg. No. 3,320,850, GET MATERNAL, Reg. No. 3,596,057, GET PASSIONATE, Reg. No. 3,596,058, GET RELIEF, Reg. No. 3,320,851, GET RELAXED, Reg. No. 3,596,059, GET SMART, Reg. No. 3,596,060, GET SOOTHED Reg. No. 3,320,855, and GET WELLNESS, Reg. No. 3,596,061, all for herb tea for medicinal purposes in International Class 5.

3. Applicant filed the application for GET SPIKED! on December 1, 2008, and has indicated in its application that it started using the mark on October 26, 2006.

4. Opposer has been using its GET CHARGED mark in interstate commerce in connection with its goods since at least as early as January 20, 2006, and filed its application for the mark on December 21, 2005. The registration issued on October 23, 2007. *See* Exhibit 1.

5. Opposer's GET CHARGED mark is among the earliest members of Opposer's family of "GET" marks, all used in connection with herbal teas for medicinal purposes. Opposer has been developing its family of "GET" marks for herbal teas since 2005, filing seven applications for registration of the first members of its "GET" family on December 21, 2005. It began to sell its first products under the "GET" marks as early as January 20, 2006. The application date, the date of first use and the registration date of each member of its family of "GET" marks is as follows:

Application Date	Mark	Date of First Use	Registration Date
December 21, 2005	GET CHARGED	January 20, 2006	October 23, 2007
December 21, 2005	GET CLEAN	January 20, 2006	October 23, 2007
December 21, 2005	GET GORGEOUS	January 20, 2006	October 23, 2007
December 21, 2005	GET LOST	January 20, 2006	October 23, 2007
December 21, 2005	GET IT GOING	January 20, 2006	October 23, 2007
December 21, 2005	GET RELIEF	January 20, 2006	October 23, 2007
December 21, 2005	GET SOOTHED	January 20, 2006	October 23, 2007
December 13, 2007	GET GROWING	January, 2008	March 24, 2009
December 13, 2007	GET HAPPY	January, 2008	March 24, 2009
December 13, 2007	GET HEART	January, 2008	March 24, 2009
December 13, 2007	GET MATERNAL	January, 2008	March 24, 2009



December 13, 2007	GET PASSIONATE	January, 2008	March 24, 2009
December 13, 2007	GET RELAXED	January, 2008	March 24, 2009
December 13, 2007	GET SMART	January, 2008	March 24, 2009
December 13, 2007	GET WELLNESS	January, 2008	March 24, 2009
April 16, 2009	GET ACTIVE	N/A	N/A
April 16, 2009	GET CENTERED	N/A	N/A
April 16, 2009	GET FLEXIBLE	N/A	N/A
April 16, 2009	GET HYDRATED	N/A	N/A
April 16, 2009	GET IN TRAINING	N/A	N/A
April 16, 2009	GET RECOVERED	N/A	N/A

At least 15 of Opposer's marks were subject of trademark applications filed prior to the filing date of the subject application for Applicant's GET SPIKED! mark. At least seven of Opposer's marks were registered prior to the filing date of the GET SPIKED! mark and seven of them were first used on goods in interstate commerce prior to Applicant's claimed date of first use for the GET SPIKED! mark.

6. Opposer has expended substantial sums and resources to advertise and promote its goods under the GET CHARGED mark and under its family of "GET" marks.

7. By reason of Opposer's advertisement, promotion and sale of Opposer's goods under the GET CHARGED and the other "GET" marks for so many years, the GET CHARGED and the other "GET" marks have come to be recognized as identifying Opposer and the value of Opposer's goods throughout the United States, and Opposer has developed substantial goodwill in GET CHARGED and the other "GET" marks.

8. Notwithstanding Opposer's prior use of and rights in and to GET CHARGED and other members of its family of "GET" marks, on December 1, 2008, Applicant filed U.S. Application Serial No. 77/623,419, for registration of the mark GET SPIKED! for use in connection with nutritional supplements in liquid form in International Class 5 and for non-alcoholic beverages, namely, sports drinks and energy drinks in International Class 32. That application was published

in the Official Gazette (Trademarks) of the United States Patent and Trademark Office on November 3, 2009. Opposer obtained an extension of time to file this Notice of Opposition through March 3, 2010. Therefore, this Opposition is being timely filed.

9. Upon information and belief, Applicant uses the GET SPIKED! mark in connection with nutritional supplements in liquid form and in connection with non-alcoholic beverages, namely, sports drinks and energy drinks.

10. Opposer's marks are all registered for herb teas for medicinal purposes.

11. There is a definite relationship and overlap between the goods offered in connection with Applicant's GET SPIKED! mark and the goods offered in connection with Opposer's GET CHARGED and family of "GET" marks. Applicant's mark is therefore likely to be confused with Opposer's marks.

12. Upon information and belief, the products identified in Applicant's application for the trademark GET SPIKED! are encountered by the same or similar class of purchasers as those who utilize or are familiar with the products offered by Opposer under its GET CHARGED mark.

13. The applicant's GET SPIKED! mark is confusingly similar to Opposer's GET CHARGED mark because the meaning of the marks are closely related, namely urging people to "get energized" or "get invigorated."

14. Applicant's GET SPIKED! mark begins with the word "GET" and is followed by an adverb that describes a "state of being" desirable to purchasers of herbal teas and other beverages promoted as providing health and energy benefits, i.e. "spiked" conveys the meaning of "energized" or "hyped." Thus, Applicant's mark delivers a message to consumers similar to the message delivered by Opposer's "GET CHARGED" mark and other members of Opposer's "GET" family of marks, all of which begin with the word "GET" and are followed by adverbs that describe

a desirable “state of being.” Therefore, purchasers are likely to believe that Applicant’s GET SPIKED! products are extensions of Opposer’s “GET” family of medicinal herb tea products.

15. Applicant’s registration and use of the mark GET SPIKED! interferes with Opposer’s “GET” marks and will seriously damage Opposer and its goodwill and reputation.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant’s mark and prays that it be denied.

Date: March 2, 2010

Respectfully submitted,  
The Republic of Tea, Inc.

By:           //Ulrika E. Mattsson//            
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